

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Federal-State Joint Board on  
Universal Service

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CC Docket No. 96-45

REPLY COMMENTS OF  
GE AMERICAN COMMUNICATIONS, INC. ON THE  
RECOMMENDED DECISION OF THE JOINT BOARD

GE American Communications, Inc. ("GE Americom") submits the following reply comments concerning the Federal-State Joint Board's Recommended Decision on universal service. 1/ As discussed below, the record confirms that (1) the sale of space segment capacity by satellite operators is unrelated to the provision of common carrier telecommunications services to which universal service applies, and (2) to the extent that a party offers common carrier services, it must have the ability to flow any new universal service costs through to all customers, including those receiving service under existing fixed term offerings.

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1/ Public Notice, DA 96-1891 (released Nov. 18, 1996); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order (Com. Car. Bur., released Dec. 11, 1996); Federal State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 96J-3 (Joint Board, released Nov. 8, 1996) ("Recommended Decision" or "RD").

### **Satellite Space Segment**

In the initial round of comments, GE Americom and many other parties supported the Joint Board's recommendation to use the Telecommunications Relay Service ("TRS") approach to determine contribution obligations. This methodology is administratively simple and rooted in the express language of the Telecommunications Act of 1996. When firms provide common carrier services they should pay universal service support on revenues received from those services, whether provided terrestrially, via satellite, or both.

At the same time, GE Americom and other satellite operators demonstrated that the management and provision of access to satellite space segment capacity under individualized contracts 2/ has long been recognized as outside the bounds of common carriage. 3/ Notably, no party suggested that satellite operators offering space segment on such a private basis should be subject to contribution requirements. This non-controversial conclusion should be adopted by the Commission.

We note that certain parties have argued for exclusion of other activities from the scope of universal service contribution on the ground that they similarly are not offering telecommunications services. GE Americom takes no position on those comments.

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2/ Space segment is capacity on satellites in orbit above the earth. It does not include the terrestrial equipment used to transmit or receive satellite communications.

3/ See, e.g., GE Americom Comments at 1-9; DirectTV/Hughes Comments at 1-6; Orion Atlantic Comments at 5-7; PanAmSat Comments at 4-6.

However, we wish to emphasize the uniqueness of satellite space segment operation so that there is no confusion regarding how space segment differs from other situations referenced in the comments. First, the Telecommunications Act is consistent with the established law under which satellite operators have long made space segment available under specialized private contracts rather than on a common carrier basis. As the Commission is well-aware, satellite operation involves enormous up-front capital expenses. To ameliorate that risk, satellite operators typically enter into highly individualized arrangements pursuant to which they agree to manage their satellites and allow certain selected parties access to the space segment capacity. <sup>4/</sup> As noted in the Recommended Decision, Congress specifically recognized the distinction between "private services" and the "common carrier offerings that are provided to the public" that make up the "telecommunications services" to which universal service obligations apply. <sup>5/</sup>

GE Americom refers the Commission back to our original comments for other discussion of the unique nature of space segment operation. Briefly, satellite space segment itself has no nexus to the public switched telephone network whatsoever, and thus satellite operators in no way benefit from or even relate to universal service. <sup>6/</sup> Furthermore, imposing universal service obligations on

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<sup>4/</sup> For background, see Domestic Fixed Satellite Transponder Sales, 90 FCC 2d 1238 (1982) ("Transponder Sales Decision"), aff'd sub nom. Wold Communications Inc. v. FCC, 735 F.2d 1435 (D.C. Cir. 1984).

<sup>5/</sup> Recommended Decision at para. 779, quoting Conference Report at 115.

<sup>6/</sup> In contrast, a party who purchases space segment from a satellite facility operator and accesses it with earth station equipment may choose to provide a

satellite space segment providers would distort video programming distribution markets and could interfere with international satellite competition. <sup>7/</sup>

For all of these reasons, GE Americom and other satellite companies have demonstrated that private negotiation of contracts for space segment does not constitute the offering of common carrier services. This conclusion has no material impact on other parties; space segment would have been a relative drop in the universal service bucket if Congress had chosen to include it. But this is a matter of the highest importance to satellite operators given the potential impact on their satellite investments and associated private arrangements with customers. The views of other parties are consistent with this conclusion.

#### Reflection of Universal Service Costs in Fixed Term Contracts

In its comments GE Americom also discussed the need for the Commission to permit telecommunications carriers to flow new universal service support costs through to customers. This issue is relevant to GE Americom because, in addition to launching and managing space segment, we also provide certain common carrier "telecommunications services" over satellites. Under the TRS methodology proposed by the Joint Board, universal service obligations could apply.

There is a strong consensus among telecommunications carriers that, to the extent they are made subject to new universal service contribution

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common carrier service interconnected to the switched network. But that decision is outside the control of the satellite operator.

<sup>7/</sup> See generally GE Americom Comments at 3-9.

obligations, they must be afforded the right to recover their added costs from customers. 8/ The Commission should explicitly clarify that this right extends to carriers with existing fixed term contractual arrangements. Under the Mobile-Sierra doctrine and related decisions, the new requirement to contribute to the universal support mechanism constitutes "substantial cause" that would provide a "public interest" justification for the carrier's changing its fixed term contracts to reflect the mandatory contributions in its rates. 9/ Clarification of this point here would eliminate the possibility of future litigation that would waste the resources of carriers and the Commission.

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8/ See, e.g., Alltel Comments at 7-8; AirTouch Comments at 26; AT&T Comments at 8-9; Bell Atlantic Comments at 8-10; BellSouth Comments at 14-16; Calif. Dept. of Consumer Affairs Comments at 38-40; Calif. PUC Comments at 13-15; CompTel Comments at 14-17; GTE Comments at 34-37; LCI Comments at 13-14; NYNEX Comments at 5, 20-23; PacTel Comments at 20-23; PageNet Comments at 15-16; PCIA Comments at 28-31; SBC Comments at 11-14; TDS Comments at 6-8; USTA Comments at 22-23; U S West Comments at 45-47; Universal Service Alliance Comments at 14-16; WorldCom Comments at 40-41.

9/ See GE Americom Comments at 9-10 (citing United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956); see also MCI Telecommunications Corp. v. FCC, 665 F.2d 1300 (D.C. Cir. 1981), appeal after remand, RCA Global Communications, Inc. v. FCC, 717 F.2d 1429 (D.C. Cir. 1983); RCA Americom Communications, Inc., 86 FCC 2d 1197, 1199-1200 (1981), aff'd in pertinent part on remand, 94 FCC 2d 1338, 1340 (1983); ACC Long Distance Corp. v. Yankee Microwave, Inc., 10 FCC Rcd 654 (1995)).

## **CONCLUSION**

**For the foregoing reasons, GE Americom respectfully requests that the Commission affirm and clarify the Recommended Decision in the manner discussed above.**

**Respectfully submitted,**

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**January 10, 1997**

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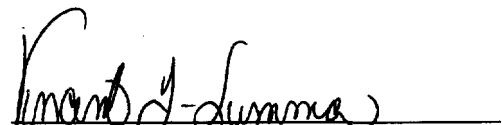
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